ALBERT H. MUNHALL

IBLA 98-98 Decided August 31, 1999

Appeal from a decision of the Area Manager, Emerald Empire Resource Area, Upper Columbia - Salmon Clearwater Districts, Bureau of Land Management, rejecting class 1 color-of-title application IDI 32332.

Affirmed.

1. Color or Claim of Title: Applications

> An applicant seeking title to a tract of land pursuant to the Color of Title Act has the burden of establishing to the Secretary of the Interior's satisfaction that the statutory requirements for purchase under the Act have been met. A failure to carry this burden with respect to any one of the requirements of that Act is fatal to the application. To demonstrate possession under claim or color of title an applicant's claim of ownership must be based on a document which, on its face, purports to convey title to the claimed land. An application fails if a description is so vague or indefinite that it cannot be said that the conveyance included the land being sought.

APPEARANCES: Albert H. Munhall, Fort Worth, Texas, and Mike Powers, Kingston, Idaho.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Albert H. Munhall has appealed an October 24, 1997, decision issued by the Area Manager, Emerald Empire Resource Area, Upper Columbia - Salmon Clearwater Districts, Bureau of Land Management (BLM), rejecting his class 1 color-of-title application (IDI 32332), for land described as lots 20 and 21, sec. 5, T. 49 N., R. 5 E., Boise Meridian, Murray, Shoshone County, Idaho.

In 1988, Munhall acquired by quitclaim deed property described as the "Murray Area House Back of Lot 12." By letter dated October 8, 1986, BLM informed Munhall that during surveying exercises in the Murray, Idaho, area BLM had determined that Munhall's house was situated on public lands. In

the letter giving notice, BLM provided instructions regarding applications under the Color of Title Act of 1928, 43 U.S.C. § 1068 (1994), and other options available to Munhall. During the next year, Munhall and Mike Powers, his appointed representative, 1/ corresponded with BLM regarding possible means of acquiring title to the land. On September 29, 1997, Munhall filed a class 1 color-of-title application.

In its decision BLM denied the application, stating that Munhall failed to satisfy the statutory requirement of good faith. BLM based this decision on a determination that Munhall lacked good faith because he had purchased the house knowing that ownership of the underlying property was in issue. The records show that the house had been conveyed to Munhall's predecessor as personal property by a bill of sale, and since 1958 the county has taxed the house, but not the real property upon which it sat.

In his statement of reasons, Munhall asserts that BLM's most recent survey lacks credibility. He claims that the "original Shoshone County map of the Murray, Idaho, townsite" was lost or destroyed and that the only available depiction of the townsite, the "fictitious Murray Sun Map," incorrectly portrays the area. Munhall contends that, if the original map were found, it would show that the house was built on a "Lot in the Sunnyside Addition of Murray" prior to the application of "U.S. Law in the Washington Territory." He explains that those who owned the house, including himself, sincerely believed they had a "grandfathered right" to the land underlying it, dating back to the establishment of the Sunnyside Addition, prior to statehood. He further argues that until 1958 the owners paid taxes on the house and the land and, when the county changed its description of the taxed property in 1958, the owners had no reason to suspect that their ownership of the land was in doubt.

[1] The Color of Title Act, 43 U.S.C. § 1068 (1994), sets forth the requirements that must be met by a claimant in order to receive a patent as follows:

> The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation, or (b) may, in his discretion, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful,

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1/ Powers appears before the Department, having submitted an executed power of attorney to represent Munhall. Several documents signed by Powers for Munhall have been received by the Department as if they had been presented personally by Munhall, including some documents received for this appeal.

> adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for the period commencing not later than January 1, 1901, to the date of application during which time they have paid taxes levied on the land by State and local governmental units, issue a patent for not to exceed one hundred and sixty acres of such land upon the payment of not less than $1.25 per acre * * *.

The method for obtaining a patent outlined in subsection (a) of section 1068 is known as a class 1 claim; a claim under part (b) is defined as a class 2 claim. 43 C.F.R. § 2540.0-5(b).

An applicant under the Color of Title Act has the burden of proof to establish to the Secretary of the Interior's satisfaction that the statutory requirements for purchase under the Act have been met. Louis C. Scalise, 129 IBLA 334, 336 (1994); John P. & Helen S. Montoya, 113 IBLA 8, 13-14 (1990); Jeanne Pierresteguy, 23 IBLA 358, 83 I.D. 23 (1975). The Board has repeatedly held that the applicant for a class 1 claim must establish that each of the requirements has been met, as a failure to carry the burden of proof with respect to any one of the elements is fatal to the application. See Heirs of Herculano Montoya, 137 IBLA 142, 147 (1996); Louis C. Scalise, supra and cases cited.

As an initial matter, we note that to the extent Munhall argues that the property at issue was included in a "townsite conveyance," that issue is not properly raised in a color-of-title application. See Shirley & Pearl Warner, 125 IBLA 143, 148 (1993); Jerome L. Kolstad, 93 IBLA 119, 122 (1986). A color-of-title applicant may not contest Government ownership of the land sought. Heirs of Herculano Montoya, supra; Loyla C. Waskul, 102 IBLA 241, 244 (1988), and cases cited therein. By filing a color-of-title application, the applicant necessarily concedes that title to the land is in the United States and seeks to have the United States convey actual title to him. The applicant thus cannot assert that his color of title derives from a patent issued by the Government because, if true, the applicant would possess actual title, not color of title.

Munhall has filed a class 1 application. Departmental regulation, 43 C.F.R. § 2540.0-5(b), essentially a restatement of the statutory requirements, provides:

> A claim of Class 1 is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation. * * * A claim is not held in good faith where held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

A claim of title supporting a color-of-title application must be based on an instrument from a source other than the United States, which on its face purports to convey the claimed land. Mabel M. Sherwood, 130 IBLA 249, 250 (1994); Shirley & Pearl Warner, supra at 147.

On the application, when responding to the question, "By what written instrument do you assert ownership?," Munhall responded: "See enclosed research paper." The attached document provides the following information. The house was built by M.S. Simmons as a family residence in 1884. The Shoshone County tax records for 1889 describe the house as being situated on the lot next to Sol Sullivans in the Murray Townsite. The tax records in 1903 describe the house as being in the Sunnyside Addition to the Murray Townsite. Alex Rosander lived in the house and paid real property taxes from 1912 until 1920. Andrew Peterson lived in the house from 1921 until 1933, Frank Heath lived in it from 1934 until 1950, and Al Slawson lived in it from 1951 until 1961. During the period from 1962 through 1964, Slawson failed to pay the property taxes, and Frank Wiegele acquired the house from the County at a tax sale held in 1965. Wiegele conveyed the house to his sister Gertrude Blair Johnson in 1966 and she conveyed it back to him in 1972. In 1977, he conveyed it to his nephew Lawrence Wiegele who sold it to Munhall in 1988.

The only conveyance documents provided in support of this narrative and the application were as follows:

> A February 21, 1946, "Deed to Mining Claim" from Peterson to Slawson for a one-half interest in several lode mining claims; [2/]
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> An August 3, 1966, Bill of Sale from Frank Wiegele to Gertrude Blair for "That certain framed dwelling house described on the tax rolls as being situated on a parcel of ground back of Lot Twelve (12), of Block Three (3), Town of Murray, County of Shoshone, State of Idaho;"
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> A May 25, 1972, Bill of Sale of the house from Gertrude Blair Johnson to Frank Wiegele;
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> A September 19, 1977, Bill of Sale of the house from Frank Wiegele to Lawrence Wiegele; and
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> An April 11, 1988, Quitclaim Deed from Lawrence Wiegele conveying "Murray Area House back of Lot 12" to Munhall.

The bills of sale are for personal property and contain nothing that could be construed as a conveyance of real property. Finally, the quitclaim

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2/ We find nothing in the mining claim deed which relates it to the house at issue.

deed to Munhall is for the "Murray Area house back of Lot 12," and cannot be said to contain a description of a parcel of land.

After review of the conveyance documents submitted by Munhall, we find that he has failed to provide a conveyance document sufficient to support a color-of-title application. A color-of-title applicant must present an instrument of conveyance initiating the chain of title which describes the land conveyed with such certainty that its boundaries may reasonably be ascertained. See Heirs of Herculano Montoya, supra at 148; Mabel M. Sherwood, supra at 250; Charles M. Schwab, 55 IBLA 8, 11 (1981). We cannot determine from any of the documents submitted by Munhall that the property underlying the house was included as part of any of the conveyances, and find nothing in those documents which describes the land Munhall seeks with such certainty that its boundaries may reasonably be ascertained. Neither the bills of sale nor the quitclaim deed quantifies a particular acreage or describes property boundaries. As a consequence, it is impossible to conclude that any land was included in the conveyance.

In response to the question in the application asking whether a title search had been conducted, Munhall responded, "No." Munhall cannot candidly propose that any of the conveyance documents, beginning with Simmons and continuing through to that conveying the house to him ever described the land he now seeks under the Color-of-Title Act. When a legal description is so vague or indefinite that it cannot be said that the deed included the land being sought, the claimant has failed to establish that the land was held "under claim or color of title," as required by section 1068. See Mabel M. Sherwood, supra at 256; Bryan N. Johnson, 15 IBLA 19, 22 (1974); Elsie V. Farington, 9 IBLA 191, 194-96 (1973).

Munhall suggests that the area claimed may be determined by reference to the original map of the Murray townsite. See Ivie G. Berry, 25 IBLA 213 (1976) (a quitclaim deed granting all real property which the grantor held of record constituted color of title to a tract of Federal land the grantor held of record at the time of the deed, despite the lack of specific description of the land in the deed); Mable M. Farlow (On Reconsideration), 39 IBLA 15, 23 (1979) (when there is ambiguity in the description evidence extrinsic to the instrument may be relied upon to show that the instrument conveyed the land). However, if the map does not present a description of a specific tract of land with sufficient specificity to resolve the ambiguity found in the conveyance document, it cannot be said that the map shows that the instrument conveyed the land. The maps and other documents submitted by Munhall are without demonstrated value for his color-of-title claim. There is no description or combination of descriptions which identify a tract of land actually conveyed. See Nora Beatrice Kelley Howerton, 71 I.D. 429, 430-32, 434 (1964) (finding that "[t]he difficulty with appellant's contentions is that she does not satisfactorily explain the reference [in the deeds] or show that there was some identification which could be relied on by anyone referring to the deeds to ascertain where the tract is located on the ground").

An important factor in our determination is found in Wiegele's acquisition of the house at the Shoshone County tax sale in 1965, and the tax basis since 1958.

A tax sale and tax deed initiate a new title for purposes of determining when claim or color of title commenced because the holder of the tax deed has no privity with the previous owner. 3/ Thomas Doyle Jones, Jr., 125 IBLA 230 (1993). Therefore, any color-of-title claim sought by Munhall commences no earlier than the first subsequent document that could be considered a conveyance of land, which was the April 1988 quitclaim deed to Munhall.

Prior to 1988, all of the conveyance documents in any way pertaining to Munhall's claim were in the form of a bill of sale. This is coupled with the fact that from and after 1958 (which was before the County conveyed the house to Wiegele), no taxes were being levied against the realty. Taxes were not paid during the period 1961 through 1964, and in 1965 the County sold the house to Wiegele to satisfy its lien. There is no evidence that Wiegele believed in good faith that he had clear title to the land. See e.g., James G. Stockton, 111 IBLA 344, 349 (1989) (failure to produce a document which would support a claim of title is contrary to a good faith belief in ownership).

Munhall's situation is similar to that in Louis Mark Mannatt, 109 IBLA 100 (1989). The application filed by Mannatt was for lands underlying a cabin he acquired by a bill of sale of personal property. Mannatt argued that the historical significance of the land he sought justified granting the application and a finding that the occupants of the cabin had paid taxes on the land. The Board found that the bill of sale establishing the sale of the cabin did not purport to convey title to the land in question. 109 IBLA at 103. We further found that Mannatt produced no instrument purporting to convey title to the land. Id. We also held that because he produced no document which suggested any of the claimed land was conveyed to him, he lacked an honest belief that he owned any of the land. 109 IBLA at 104. As we iterated in Mannatt, 109 IBLA at 104, we reaffirm here: "[The m]ere occupancy of public lands and the placing of improvements thereon, without some colorable claim of right of possession, give rise to no vested rights against the United States. See United States v. Osterland, 505 F. Supp. 165 (D. Colo. 1981); Lillian Barlow, 58 IBLA 385, 388 (1981)." The April 11, 1998, quitclaim deed from Wiegele to Munhall is the first document that could be considered as the basis for a color-of-title claim. However, the period between April 11, 1988, and October 8, 1996, when BLM advised Munhall that he did not own the land is less than 20 years. Munhall does not qualify for a class 1 color-of-title grant because he was not in good faith, peaceful, adverse possession of the land for more than 20 years.

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3/ A class 2 application would also fail. The Shoshone County tax sale occurred after the Jan. 1, 1901, date specified in section 1068 for initiating title.

Thus, BLM properly rejected Munhall's color-of-title application. However, it is free to explore other means for conveying the tract of public land upon which the house sits to Munhall. See Mabel M. Sherwood, supra at 258; Paul Marshall, supra at 301-02.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, the decision appealed from is affirmed.

R.W. Mullen
Administrative Judge

I concur:

John H. Kelly
Administrative Judge